

## **REMARKS**

[0001] Claims 4, 10, 18, and 29 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Claims 1, 3, 5, 8, 9, 11, 13-17, 19, 21 23-28, and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent Publication 2004/0065740 by Mergenthaler et al. (hereinafter “Mergenthaler”) in view of United States Patent Application 5,945,656 to Lemelson et al. (hereinafter “Lemelson”). Claims 4, 7, 10, 12, 18, 22, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mergenthaler and Lemelson in view of United States Patent 5,497,314 to Novak (hereinafter “Novak”).

[0002] Applicants thank the examiner for the interview of June 2, 2006 where the teaching of Mergenthaler and Lemelson relating to color and texture was discussed. As a result of the discussion, Applicants have amended independent claims 1, 9, 13, 16, 24, and 27 to more distinctly point out the present invention. Applicants have also amended claims 4, 10, 18, and 29 to cure indefiniteness, and claims 5, 11, 19, 26, and 30 to conform to the amended claims upon which claims 5, 11, 19, 26, and 30 depend. The amendments are fully supported by the specification. Claims 3, 17, 21, 25, and 28 are canceled.

## **RESPONSE TO REJECTION OF CLAIMS UNDER 35 U.S.C. § 112**

[0003] Claims 4, 10, 18, and 29 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Applicants have amended the claims with the limitation “...present to the user a plurality of candidate items with visual signatures matching the visual signature of the item...” Claim 4 as amended. See also claims 10, 18, and 29. The amendment is fully supported by the specification, which teaches presenting a candidate item that most resembles the item to the user. Page 14, Lines 13-15. The amendment makes clear that the candidate items are selected because of a visual resemblance based on the visual signature, and not because the candidate items are identified by the coded identifier. Therefore, more than one candidate item may be presented. Applicants submit that amendment cures the indefiniteness of claims 4, 10, 18, and 29.

## **RESPONSE TO REJECTION OF CLAIMS UNDER 35 U.S.C. § 103(a)**

[0004] Claims 1, 3, 5, 8, 9, 11, 13-17, 19, 21 23-28, and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mergenthaler in view of Lemelson. Claims 4, 7, 10, 12, 18, 22, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mergenthaler and Lemelson in view of Novak. Applicants respectfully traverse these rejections. In particular, Applicants traverse the rejections of independent claims 1, 9, 13, 16, 24, and 27 with the rejection of claim 21 as claims 1, 9, 13, 16, 24, and 27 are amended in part with the limitations of claim 21.

[0005] Independent claims 1, 9, 13, 16, 24, and 27 are amended with the limitation “...convert the visual characteristic into a visual signature based on brightness, hue, color saturation, and color variation...” Claim 1 as amended. See also claims 9, 13, 16, 24, and 27. The amendment is fully supported by original claim 21 and by the specification, which teaches the visual signature based on the brightness, hue, color saturation, color variation, size, and shape. Page 12, Lines 19-22.

[0006] Claims 1, 9, 13, 16, 24, and 27 are further amended with the limitation “...verify the identity of the item based on the visual signature...” Claim 1 as amended. See also claims 9, 13, 16, 24, and 27. The amendment is supported by the specification, which discloses visual signature identification. Page 12, Lines 22-24.

[0007] In addition, claims 1, 9, 13, 16, 24, and 27 are amended with the limitation “...receive a confirmation selection from the user confirming that the visual characteristic of the item matches the audio information...” Claim 1 as amended. See also claims 9, 13, 16, 24, and 27. The amendment is fully supported by the specification, which teaches the user confirming the item. Page 14, Lines 15-17.

[0008] As amended, claims 1, 9, 13, 16, 24, and 27 claim *converting the visual characteristic into a visual signature based on brightness, hue, color saturation, and color variation, verifying the identity of the item based on the visual signature, providing audio information describing one or more visual characteristics, and receiving a confirmation selection from the user confirming that the visual characteristic of the item matches the audio information*. In contrast, neither Mergenthaler nor Lemelson teach converting the visual characteristic into a visual signature based on brightness, hue, color saturation, and color variation, verifying the identity of the item based on the visual

signature, and receiving a confirmation selection from the user confirming that the visual characteristic of the item matches the audio information.

[0009] Specifically, Mergenthaler teaches using a bar code scanner signal to produce imaging information, including beam position and beam length. Mergenthaler, Abstract. Mergenthaler does not disclose converting the visual characteristic into a visual signature based on brightness, hue, color saturation, and color variation as claimed by the present invention. As a result, Mergenthaler also does not teach verifying the identity of an item based on the visual signature as claimed by the present invention.

[0010] Mergenthaler further discloses retrieving product information associated with a bar code and comparing actual and expected size and shape information. Mergenthaler, Page 5, Paragraph 41; Fig. 5, Refs. 522, 524. In contrast, the present invention claims receiving a confirmation selection from the user confirming that the visual characteristic of the item matches the audio information. Claim 1. Mergenthaler does not teach receiving the confirmation selection from the user.

[0011] Lemelson also does not teach the limitations of converting the visual characteristic into a visual signature based on brightness, hue, color saturation, and color variation, verifying the identity of the item based on the visual signature, and receiving a confirmation selection from the user confirming that the visual characteristic of the item matches the audio information. Instead, Lemelson discloses verifying that the audio description corresponds with the item purchased. Lemelson, Col. 7, Lines 29-31.

[0012] Therefore, because neither Mergenthaler nor Lemelson teach the limitations of converting the visual characteristic into a visual signature based on brightness, hue, color saturation, color variation, verifying the identity of the item based on the visual signature, and receiving a confirmation selection from the user confirming that the visual characteristic of the item matches the audio information, Applicants assert that claims 1, 9, 13, 16, 24, and 27 are allowable. Applicants further submit that dependent claims 4, 5, 7, 8, 10-12, 14, 15, 18, 19, 22, 23, 26, 29, and 30 are allowable as depending from allowable claims.

[0013] With further regards to independent claims 1, 9, 13, 16, 24, and 27, Applicants assert that it is impermissible to combine the teachings of Mergenthaler and Lemelson as Mergenthaler destroys the purpose of Lemelson. Specifically, Mergenthaler discloses retrieving product information associated with a bar code and comparing actual and expected size and shape information. Mergenthaler, Page 5, Paragraph 41; Fig. 5, Refs. 522, 524. By positively identifying an item with the bar code and by verifying that the expected size and shape of the item matches the actual size and shape, Mergenthaler destroys the purpose of the verification by a salesperson that the audio description of the item matches the item as taught by Lemelson. Lemelson, Col. 7, Lines 29-31. The Federal Circuit has determined there is no suggestion or motivation to make a proposed modification if the modification would render the prior art unsatisfactory for its intended purpose. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Therefore, Applicants assert that the Mergenthaler and Lemelson references should not be combined and that independent claims 1, 9, 13, 16, 24, and 27 are allowable.

[0014] In view of the amendments made, Applicants submit that claims 1, 4, 5, 7-16, 18, 19, 22-24, 26, 27, 29, and 30 are in condition for allowance. Should additional information be required regarding the traversal of the rejections of the dependent claims enumerated above, Examiner is respectfully asked to notify Applicants of such need. If any impediments to the prompt allowance of the claims can be resolved by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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